



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-1038]

RIN 1625-AA87

Security Zone; On the Waters in Kailua Bay, Oahu, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary security zone on the waters south of Kapoho Point and a nearby channel in Kailua Bay within the Honolulu Captain of the Port (COTP) Zone. This security zone is necessary to ensure the safety of the President of the United States and his family members.

DATES: This rule is effective from 6 a.m. (HST) on December 17, 2012, through 10 p.m. (HST) on January 6, 2013.

ADDRESSES: Documents indicated in this preamble as being available in the docket USCG-2012-1038 are available online by going to <http://www.regulations.gov>, inserting USCG-2012-1038 in the "Keyword" box, and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE,

Washington, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Lieutenant Commander Scott O.

Whaley, Waterways Management Division, U.S. Coast Guard Sector Honolulu; telephone (808) 522-8264 (ext. 352), email

Scott.O.Whaley@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective less than 30 days after publication in the Federal Register. The details of the President's intended travel to Hawaii were not made available to the Coast Guard in sufficient time to issue a notice of proposed rulemaking. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect the President and his

family members; therefore, a 30-day notice period is impracticable. Delaying the effective date would be contrary to the security zone's intended objectives of protecting high-ranking officials, mitigating potential terroristic acts and enhancing public and maritime safety and security. Publishing a Notice of Proposed Rulemaking (NPRM) and delaying the effective date would be contrary to the public interest since the occasion would occur before a notice-and-comment rulemaking could be completed, thereby jeopardizing the safety of the President of the United States, members of his family members, and other senior government officials. The COTP finds that this temporary security zone needs to be effective by December 17, 2012, to ensure the safety of the President of the United States and members of his official party visiting the Kailua Bay area on the eastern coast of Oahu, Hawaii.

#### Background and Purpose

From December 17, 2012, through January 6, 2013, the President of the United States and his family members plan to visit near the Kailua Bay shoreline on Oahu, Hawaii. This position is located adjacent to U.S. navigable waters in the Honolulu Captain of the Port Zone. The Coast Guard is establishing this security zone to ensure the safety of the President of the United States and his family members.

#### Discussion of Temporary Final Rule

This temporary final rule is effective from 6 a.m. HST on December 17, 2012 through 10 p.m. HST on January 6, 2013. The security zone area is located within the Honolulu Captain of the Port Zone (See 33 CFR 3.70-10) and covers all U.S. navigable waters in the Kailua Bay on the west side of a line connecting Kapoho Point and continuing at a bearing of 240[deg] (true) to the southwestern corner of Kailuana Loop; as well as the nearby channel from its entrance at Kapoho Point to a point 150-yards to the southwest of the N. Kalaheo Avenue Road Bridge. This zone extends from the surface of the water to the ocean floor. This zone will include the navigable waters of the channel beginning at point 21[deg]24'56'' N, 157[deg]44'58'' W, then extending to 21[deg]25'26'' N, 157[deg]44'21'' W (Kapoho Point) including all the waters to the west of a straight line to 21[deg]25'11'' N, 157[deg]43'34'' W (Kailuana Loop), and then extending back to the original point 21[deg]24'56'' N, 157[deg]44'58'' W.

Two (2) yellow buoys and a shore-side marker will be placed in proximity of the security zone along the security zone boundary and one (1) orange boom will be placed at the channel boundary southwest of the N. Kalaheo Avenue Road Bridge as visual aids for mariners and the public to approximate the zone. An illustration of the security zone will be made available on [www.regulations.gov](http://www.regulations.gov) in docket for this rulemaking, USCG-2012-1038.

In accordance with the general regulations in 33 CFR Part 165, Subpart D, no person or vessel will be permitted to transit into or remain in the zone except for authorized support vessels, aircraft and support personnel, or other vessels authorized by the Captain of the Port. Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce the zone. Vessels, aircraft, or persons in violation of this rule would be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

#### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the limited duration of the zone, the limited

geographic area affected by it, and the lack of commercial vessel traffic affected by the zone.

## 2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule will affect the following entities, all of which are small entities: the owners or operators of six jet-ski and para-sailing companies. These companies will only be affected during the arrival and departure of the President of the United States through Honolulu International Airport. Notice to enforce the security zone is not provided to the Coast Guard more than 12 hours before the President arrives or departs.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on small entities. This security zone would not have a significant economic impact on these small entities for the following reasons: this security zone will be activated, and thus subject to enforcement, for six hours for the President's arrival and for six hours for his departure. Once the Coast Guard is notified of

the need to enforce the security zone, all six of the affected jet-ski and para-sailing companies will be contacted and made aware of the security zone enforcement. Additionally, marine advisories will be issued to notify mariners of the enforcement of the security zone. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule will economically affect it.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking.

If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LCDR Scott O. Whaley at (808) 522-8264 ext. 352. The Coast Guard will not retaliate against small entities that question or complain about this temporary final rule or any policy or action of the Coast Guard

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State,



local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is

categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This regulation establishes one security zone. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine security, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T14-215 to read as follows:

§ 165.T14-215 Security Zone; On the Waters in Kailua Bay, Oahu, HI.

(a) Location. The following area, within the Honolulu Captain of the Port Zone (See 33 CFR 3.70-10), from the surface of the water to the ocean floor is a temporary security zone: All waters in Kailua Bay to the west of a line beginning at Kapoho Point and thence southwestward at a bearing of 240[deg] (true) to the

shoreline at the southeastern corner of Kailuana Loop; as well as the nearby channel from its entrance at Kapoho Point to a point 150-yards to the southwest of the N. Kalaheo Avenue Road Bridge. This zone extends from the surface of the water to the ocean floor. This zone will include the navigable waters of the channel beginning at point 21[deg]24'56'' N, 157[deg]44'58'' W, then extending to 21[deg]25'26'' N, 157[deg]44'21'' W (Kapoho Point) including all the waters to the west of a straight line to 21[deg]25'11'' N, 157[deg]43'34'' W (Kailuana Loop), and then extending back to the original point 21[deg]24'56'' N, 157[deg]44'58'' W.

(b) Effective period. This section is effective from 6 a.m. HST on December 17, 2012, through 10 p.m. HST on January 6, 2013.

(c) Regulations. The general regulations governing security zones contained in 33 CFR 165.33, subpart D, apply to the security zone created by this temporary final rule.

(1) All persons are required to comply with the general regulations governing security zones found in 33 CFR part 165.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Honolulu.

(3) Persons desiring to transit the security zones identified in paragraph (a) of this section may contact the Captain of the Port at Command Center telephone number (808) 842-2600 and (808) 842-2601, fax (808) 842-2624 or on VHF channel 16 (156.8 Mhz) to

seek permission to transit the zones. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Honolulu or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) The U.S. Coast Guard may be assisted in the patrol and enforcement of the zones by Federal, State, and local agencies.

(d) Notice of enforcement. The Captain of the Port Honolulu will cause notice of the enforcement of the security zone described in this section to be made by verbal broadcasts and written notice to mariners and the general public.

(e) Definitions. As used in this section, *designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Honolulu to assist in enforcing the security zones described in paragraph (a) of this section.

Dated: November 29, 2012

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J.M. NUNAN

Captain, U.S. Coast Guard

Captain of the Port, Honolulu

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